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In re Application of
Kaslow, David C., et al.
Application No.: 09/554,960
PCT No.: PCT/US98/25742
Int. Filing Date: 04 December 1998
Priority Date: 05 December 1997
Attorney Docket No.: 15280-3421PC
For: VACCINES FOR BLOCKING
TRANSMISSION OF PLASMODIUM
VIVAX

DECISION ON
PETITIONS
UNDER 37 CFR 1.181
AND 37 CFR 1.137(a)

This decision is in response to "Request For Reconsideration of Petition Under 37 CFR 1.181 and 1.137(a)," filed in the United States Patent and Trademark Office on 12 February 2003.

BACKGROUND

On 04 December 1998, applicants filed international application PCT/US98/25742. On 01 July 1999, applicants filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 05 June 2000.

On 22 May 2000, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 23 June 2000, USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required. The Notification of Missing Requirements set a one month extendable time period for reply.

On 01 June 2001, USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the above-identified application was abandoned for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 23 June 2000.

On 09 October 2001, applicants filed the instant "Petition For Revival of an International Application For Patent Designating the U.S. Abandoned Unavoidably Under 37 CFR 1.137(a)," which was accompanied by, *inter alia*, a declaration of Michele Simone, and a printout of an excerpt of the docket for 08/01/00 to 08/31/00.

On 01 February 2002, the Office mailed Decision on Petition Under 37 CFR 1.181 and 37 CFR 1.137(a).

On 09 September 2002, applicants filed the instant renewed petition along with a Certificate of Mailing under 37 CFR 1.8 and the fee for a four month extension of time.

On 05 November 2002, the Office mailed Decision on Petition Under 37 CFR 1.181 and 37 CFR 1.137(a), dismissing applicants' petitions without prejudice.

On 12 February 2003, applicants submitted the instant renewed petition. It included a certificate of mailing indicating that the papers were mailed on 05 February 2003 and the fee for a one month extension of time.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Items (1) and (2) were previously met.

Item (3) has now been met.


The declarations submitted on 12 February 2003 comply with 37 CFR 1.497(a)-(b).


CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**. The Petition Under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 01 June 2001 is **VACATED**.

The application has an international filing date of 04 December 1998 under 35 U.S.C. §363 and a date of **12 February 2003** under 35 U.S.C. §371. This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.


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